

Message Text

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PAGE 01 BANGUI 01657 251050Z
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SUBJ: NARCOTICS LAW

REF: STATE 170187

1. OPERATIVE NARCOTICS LEGISLATION IN CAE LIMITED TO ONE ARTICLE
PENAL CODE (ARTICLE 285 OF PUBLIC LAW 61-239 OF JULY 18, 1961,
AS AMENDED). FOLLOWING IS OUR TRANSLATION OF ARTICLE 285:

QUOTE: WHO SHALL, WITH THE EXCEPTION OF CASES PROVIDED BY LAW,
CULTIVATE, POSSESS, OR SELL, HASHISH (INDIAN HEMP) OR ITS
DERIVATIVES, SHALL BE PUNISHED BY IMPRISONMENT FROM ONE MONTH
AND ONE DAY (MINIMUM) TO TWO YEARS (MAXIMUM), AND BE ASSESSED
A FINE FROM 100,001 TO 400,000 CFA FRANCS, OR ONE OF THESE
TWO PENALTIES WILL BE IMPOSED. CONFISCATION AND DESTRUCTION OF
THESE SUBSTANCES SHALL BE ORDERED IN ALL CASES. UNQUOTE.

AS NO OTHER LEGISLATION EXISTS, POST HAS RELIED PRIMARILY ON
PRECEDENT IN PREPARING THIS REPORT. POST HAS REQUESTED, HOWEVER,
CONFIRMATION FROM ATTORNEY GENERAL THAT CITATION OF HASHISH
IN FOREGOING ARTICLE APPLIES ALSO TO OPIUM AND COCA AND THEIR
DERIVATIVES, AND INFORMATION RE ANY PROSECUTION GUIDELINES ON
QUESTIONS OF AMOUNTS OF DRUGS SEIZED IN RELATION TO SENTENCES
DEMANDED. FOLLOWING FOLLOWS FORMAT OF QUESTIONS PROVIDED REFTEL.
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PAGE 02 BANGUI 01657 251050Z

2. (1) POSSESSION: (A) NO DIFFERENTIATION MADE. (B) NO AMOUNT
SPECIFIED. PRACTICE INDICATES, HOWEVER, THAT EVEN SMALL AMOUNTS
OF ANY SUBSTANCE ARE GROUNDS FOR ARREST. (C) PENALTIES FOR
POSSESSION ARE THE SAME AS THOSE FOR CULTIVATION AND TRAFFICKING.
PRECEDENT INDICATES THAT THOSE ARRESTED WITH LARGER QUANTITIES
OF ANY SUBSTANCE RECEIVE HEAVIER SENTENCES, WITHIN MAXIMUM

PROVIDED BY LAW. .2)

TRAFFICKING: (A) NO SPECIFIC AMOUNT OF DRUGS CITED IN LAW AS CONSTITUTING TRAFFICKING OFFENSE. (B) PENALTIES SAME AS ABOVE. (C) PRECEDENT INDICATES THAT LARGER AMOUNTS CONSTITUTE TRAFFICKING, ALTHOUGH GIVEN SIMILARITY OF PENALTIES PROVIDED BY LAW THIS DISTINCTION IS NOT RELEVANT. (D) POST NOT AWARE OF ANY PRECEDENT RELATED TO CONSPIRACY TO TRAFFIC. (3) CULTIVATION, PRODUCTION, ELABORATION: (A) ALTHOUGH LAW CITES ONLY CANNABIS (HASHISH), PRECEDENT INDICATES ALL NARCOTIC SUBSTANCES COVERED BY THIS CATEGORY. POST UNAWARE ANY COURT CASES FOR CULTIVATION, PRODUCTION, ELABORATION OF COCA OR OPIUM AND THEIR DERIVATIVES. (B) CULTIVATION NOT RPT NOT LEGAL. (C) LAW DOES NOT RPT NOT CONTAIN PENALTIES FOR ELABORATING NARCOTIC SUBSTANCES AND POST UNAWARE ANY LOCAL PRODUCTION OR THESE DERIVATIVES. (4) FINANCIAL: (A) NO RPT NO CITATION IN LAW RE FINANCIAL SUPPORT, AND POST UNAWARE ANY LEGAL PRECEDENT. (B) EXCHANGE CONTROLS EXIST AS CAE IS PART OF FRANC ZONE AND BOUND BY INTERNATIONAL AGREEMENTS TO APPLY FRENCH EXCHANGE CONTROL AND LAWS RE FOREIGN BANK ACCOUNT HOLDINGS. (5) CRIMINAL PROCEDURE: (A2 PERIOD OF INVESTIGATIVE DETENTION IS 48 HOURS, ALTHOUGH THIS CAN BE EXTENDED ALMOST INDEFINITELY ON THE AUTHORITY OF THE STATE PROSECUTING ATTORNEY. (B) IN PRACTICE INVESTIGATIVE DETENTION IS ARBITRARY, AND AVERAGE TIME IS ONE TO TWO WEEKS. CONSULAR ACCESS IS GENERALLY PERMITTED ALTHOUGH PRECEDENT INDICATES THAT AUTHORITIES MAKE LITTLE IF ANY EFFORT TO NOTIFY CONSULS OR EMBASSIES. (C) TRIAL PROCESS APPEARS TO DEPEND ON NATURE OF CASE. IF LIMITED OFFICIAL USE

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PAGE 03 BANGUI 01657 251050Z

PROSECUTORS CASE IS RELATIVELY CLEAR (KNOWN AS CASE OF "FLAGRANT DELIT") WHOLE PROCESS FROM ARREST TO CONVICTION TAKES APPROX ONE MONTH. IF PROSECUTOR'S CASE IS NOT CLEAR, BUT EXTENSIVE INVESTIGATION IS NOT REQUIRED, THIS PROCESS CAN BE EXTENDED BY ANOTHER MONTH (KNOWN LOCALLY AS "CITATION DIRECTE"). IF CASE IS COMPLICATED AND FURTHER INVESTIGATION REQUIRED, CASE CAN BE REFERRED TO AN INVESTIGATIVE JUDGE (KNOWN AS "JUGE D'INSTRUCTION"). AS PHYSICAL TRANSFER OF CASE FILE CAN TAKE UP TO THREE MONTHS IN CAE BUREAUCRACY, THESE CASES CAN TAKE AS LONG AS ONE YEAR. APPELLATE PROCESS AVERAGES SIX MONTHS, ALTHOUGH THIS CAN BE LESSENED IF DEFENSE ATTORNEY IS AGGRESSIVE. (D) PUBLIC DEFENDERS IN PRACTICE ARE AVAILABLE ONLY FOR SERIOUS CRIMINAL CASES. ADEQUATE LAWYERS FOR NARCOTICS CASES ARE AVAILABLE AND FEES FOR UNCOMPLICATED CASES RANGE FROM 300 TO 500 DOLLARS. (E) NO PROVISION FOR PAROLE AFTER SENTENCING EXISTS, ALTHOUGH SENTENCES CAN BE SUSPENDED IN TOTAL OR IN PART. CONDITIONAL LIBERTY PRIOR TO SENTENCING OCCURS, BUT NOT GUARANTEED BY LAW. CONDITIONAL LIBERTY IS GRANTED UPON DISCRETION OF PUBLIC PROSECUTOR, AND PRECEDENT INDICATES THAT SUCH LIBERTY IS NOT GRANTED WHEN PUBLIC PROSECUTOR ANTICIPATES CONVICTION (I.E. PRISON SENTENCE BUT NOT RPT NOT FINE). TRIAL JUDGE CAN ALSO GRANT CONDITIONAL LIBERTY, ALTHOUGH POST UNAWARE SUFFICIENT

PRECEDENT TO MAKE GENERALIZATION. ALTHOUGH BAIL EXISTS UNDER
LAW FOR CONDITIONAL LIBERTY, IT IS RARELY REQUIRED IN PRACTICE.
(F) PRACTICE ON EXPULSION OF MINOR OFFENDERS IS UNEVEN AND
APPEARS TO BE RELATED TO BEHAVIOR OF PERSON ARRESTED, I.E.
THOSE WHO ARE HUMBLE AND CONTRITE GENERALL TREATED MORE
LENIENTLY THAN OTHERS.

3. POST WILL INFORM DEPARTMENT WHEN IT RECEIVES CONFIRMATION
AND CLARIFICATION OF LEGALLY AMBIGUOUS POINTS DISCUSSED IN PARA 1.

4. FYI: DESPITE ALL OF ABOVE LOCAL VERSION OF HASHISH APPEARS
TO BE IN AMPLE SUPPLY AND READILH AVAILABLE. BULK OF PRECEDENT
CITED ABOVE BASED ON CASES INVOLVING EUROPEANS.

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PAGE 04 BANGUI 01657 251050Z

5. DECON ON RECEIPT.
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